

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:18-cv-195-FDW**

MICHAEL ODELL FAIR,)	
)	
Plaintiff,)	
)	
vs.)	
)	
JASON MUNDAY,)	<u>ORDER</u>
)	
Defendant.)	
_____)	

THIS MATTER is before the Court on initial review of Plaintiff’s Complaint pursuant to 28 U.S.C. § 1915(e) and § 1915A. (Doc. No. 1). Plaintiff seeks to proceed in forma pauperis. (Doc. No. 2).

I. BACKGROUND

Pro se Plaintiff Michael Fair is a pre-trial detainee currently incarcerated in the Lincoln County Detention Center in Lincolnton, North Carolina. Plaintiff filed this action on December 14, 2018, pursuant to 42 U.S.C. § 1983, naming as the sole Defendant Detective Jason Munday of the Lincoln County Police Department. Plaintiff purports to bring a claim against Defendant for “discrimination” and “defamation of character” based on Plaintiff’s allegations that, in May 2017, Defendant Munday falsely charged Plaintiff with belonging to a drug conspiracy solely because Plaintiff lived in a “drug neighborhood,” and Munday also made false statements to the public about Plaintiff being part of a drug conspiracy.

II. STANDARD OF REVIEW

Because Plaintiff seeks to proceed in forma pauperis, the Court must review the Complaint to determine whether it is subject to dismissal on the grounds that it is “frivolous or

malicious [or] fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2). Furthermore, § 1915A requires an initial review of a “complaint in a civil action in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity,” and the court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint is frivolous, malicious, or fails to state a claim upon which relief may be granted; or seeks monetary relief from a defendant who is immune from such relief. In its frivolity review, this Court must determine whether the Complaint raises an indisputably meritless legal theory or is founded upon clearly baseless factual contentions, such as fantastic or delusional scenarios. Neitzke v. Williams, 490 U.S. 319, 327-28 (1989).

III. DISCUSSION

In the Complaint, Plaintiff notes that he has already filed a previous lawsuit dealing with the same facts as those involved in this action. (Doc. No. 1 at 1). Indeed, on October 12, 2018, he filed an almost identical action against Defendant Munday, and that action is pending in the Court. See (Fair v. Munday, No. 5:18cv167 (W.D.N.C.)). On December 3, 2018, this Court held that Plaintiff’s allegations survived initial screening in that action. Because this action is duplicative of the action already pending in this Court, it will be dismissed.

IV. CONCLUSION


For the reasons stated herein, the Court will dismiss this action without prejudice because Plaintiff already has an almost identical action pending in this Court against the same Defendant.

IT IS, THEREFORE, ORDERED that:

- (1) Plaintiff’s Complaint is dismissed without prejudice.
- (2) Plaintiff’s Application to Proceed in Forma Pauperis, (Doc. No. 2), is **GRANTED**.
- (3) The Clerk is instructed to terminate this action.

- (4) In accordance with 28 U.S.C. § 1915(b)(2), the correctional facility where Plaintiff is incarcerated is required to deduct monthly payments of 20% of the preceding month's income credited to Plaintiff's trust fund account each time the amount in the account exceeds \$10.00. These monthly payments are to be sent to the Clerk of Court for the United States District Court for the Western District of North Carolina until the statutory fee of \$350.00 is paid in full. The Clerk is respectfully instructed to mail this Order to the Lincoln County Detention Center in Lincolnton, North Carolina.

Signed: December 27, 2018



Frank D. Whitney
Chief United States District Judge

